

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

07-CR -6024L

v.

ISAAC JUSTINIANO,

Defendant.

This Court referred all pretrial motions relating to this three-count indictment to United States Magistrate Judge Marian W. Payson pursuant to 28 U.S.C. § 636(b). Motions were filed and the Magistrate Judge reviewed the motion and conducted a suppression hearing relating to a statement made by the defendant and the fruits of the search conducted by law enforcement officials. Magistrate Judge Payson issued a thorough Decision and Order/Report and Recommendation concerning the motions made. Defendant duly filed objections to that Report and Recommendation and an appeal from the Decision and Order. Justiniano objected the denial of his request for a bill of particulars and the denial of his motions to suppress statements and physical evidence.

I have carefully reviewed Magistrate Judge Payson's Decision and Order/Report and Recommendation as well as the objections. The transcript of the suppression hearing has been

prepared and available for my review. I find no basis to reverse or modify the decisions of the Magistrate Judge.

Dealing with the Decision and Order, denying the request for a bill of particulars, the standard for review here is whether the Magistrate Judge's decision was clearly erroneous. I find no such error. Magistrate Judge Payson set out the reasons for the denial, and I concur. In light of the voluntary discovery and the other matters mentioned, the Magistrate Judge properly denied the request for a bill of particulars.

Concerning the motions to suppress, several law enforcement officials testified. There was no testimony from the defendant or any other defense witness. Magistrate Judge Payson found that *Miranda* warnings were given to the defendant by Officer Charles LoTempio from the Rochester Police Department. Magistrate Judge Payson found that the testimony supported the conclusion that the defendant waived his *Miranda* rights. It is not contested that Justiniano was in custody, but I find that the Government has established that Justiniano voluntarily waived his constitutional rights before making the statements to the officer, involving possession of the drugs and the firearm.

I also agree with Magistrate Judge Payson that the search conducted by defendant's parole officers was reasonably related to the performance of their duties. The officers' actions were reasonable based on all the facts presented to them. Those facts justified the search as does the relatively-recent Supreme Court decision in *Samson v. California*, 547 U.S. 843 (2006). As a condition of Justiniano's parole, he was required to authorize his parole officer to search his residence or person at any time. In light of that, it seems that *Samson* would justify a search. Even if under other circumstances there may not have been probable cause, I agree with Magistrate Judge

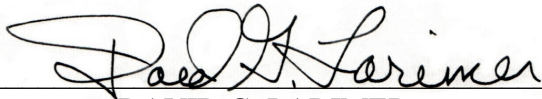
Payson that the search here appears to have been “rationally and reasonably related to the performance of the parole officer’s duty.” *People v. Huntley*, 43 N.Y.2d 175, 181 (1977).

CONCLUSION

The appeal from Magistrate Judge Payson’s Decision and Order denying the bill of particulars is denied and the Magistrate Judge’s decision is affirmed in all respects.

I accept and adopt the Report and Recommendation of Magistrate Judge Payson and, therefore, I deny defendant Isaac Justiniano’s motion to suppress physical evidence and statements.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
May 29, 2008.